

CHAPTER 4-10.1 POTATO INDUSTRY PROMOTION ACT

4-10.1-01. Title of act. This act is known as the "Potato Industry Promotion Act of North Dakota".

4-10.1-02. Legislative policy. It is hereby declared that the production, development, marketing, and promotion of Irish potatoes in North Dakota is important to the general welfare of the people of the state of North Dakota; that it is in the public interest that better methods of production, processing, and marketing of potatoes and the advertising and promoting of potatoes grown in the state of North Dakota be fostered, encouraged, developed, and improved so that the potato industry within the state of North Dakota, the people employed by said industry, directly or indirectly, and the people of the state of North Dakota should be benefited thereby, the accomplishment of which requires and demands the establishment of a North Dakota state potato council for the purposes and with the objectives of contributing to the stabilization and improvement of the agricultural economy of this state. The provisions of this chapter must not be construed to abrogate or limit in any way the rights, powers, duties, and functions of the office of the agriculture commissioner or any other agency of the state, but are supplementary thereto and in aid and cooperation therewith; nor may the provisions of this chapter be construed to authorize the North Dakota state potato council to engage in competitive business enterprises, it being the intended purpose of this chapter that the council through research and advertising, shall promote North Dakota grown Irish potatoes.

4-10.1-03. Definitions. Whenever used in this chapter:

1. "Commissioner" means agriculture commissioner.
2. "Council" means the North Dakota potato council.
3. "Designated handler" means any person who initially places potatoes, whether that person is an owner, agent, or otherwise, into the channels of trade and commerce, or who is engaged in the processing of potatoes into food for human consumption in any form. A grower selling that grower's unharvested potatoes, or delivering that grower's potatoes from the farm on which they are produced to storage facilities, packing shed, or processing plant, within the state, is not considered to be a designated handler.
4. "Grower" means any person who plants, raises, and harvests Irish potatoes from more than ten acres [4.05 hectares].
5. "Hundredweight" means a one hundred pound unit [45.36 kilograms] or combination of packages making a one hundred pound unit [45.36 kilograms] or any shipment of potatoes based on invoices or bills of lading records.
6. "Participating grower" means a grower who has not gained exemption from the payment of taxes on potato production under this chapter for a particular year, or a grower who is not exempt from the payment of taxes on potato production under the terms of this chapter.
7. "Person" means an individual, partnership, corporation, limited liability company, association, grower, cooperative, or any other business unit.
8. The term "potatoes" means any and all varieties of Irish potatoes harvested within the state of North Dakota.
9. "Processor" means a person who is actively engaged in the processing of potatoes for human consumption.

4-10.1-04. North Dakota state potato council - Membership - Election - Term. There is hereby established a North Dakota state potato council. The council is composed of the agriculture commissioner or his designated representative, who is chairman of the council, and one participating grower elected from each of the districts hereinafter established. Every elected council member must be a citizen of the state and a bona fide resident of and participating grower in the district he represents. The term of each elected member is three years and begins on July first of the year of election, except that initially one member must be elected for a three-year term; two members must be elected for two-year terms; and two members must be elected for one-year terms as designated by the commissioner. If at any time during a member's term he ceases to possess any of the qualifications provided for in this chapter, his office is deemed vacant and the council shall appoint another qualified participating grower for the remainder of the term of the office vacated. The commissioner shall conduct all elections under this section in each district in such a manner as he, in his discretion, deems fair and reasonable. All such elections must be conducted in the month of June. No elected member of the council is eligible to serve more than two consecutive three-year terms.

4-10.1-05. Potato districts - Establishment. It being the intent of this chapter to divide the state into districts containing as nearly equal potato acreages as practicable, the following potato districts are established:

1. District one consists of the counties of Pembina and Cavalier.
2. District two consists of all townships in Walsh County in and west of range fifty-four.
3. District three consists of all those townships in Walsh County in and east of range fifty-three.
4. District four consists of the counties of Grand Forks, Nelson, and Benson.
5. District five consists of the counties of Traill, Cass, Richland, Steele, Barnes, Griggs, Stutsman, Foster, Eddy, LaMoure, Dickey, Ransom, Sargent, Logan, McIntosh, Burleigh, Kidder, Sheridan, Wells, Burke, Divide, Mountrail, Renville, Ward, Williams, McHenry, Pierce, Dunn, McKenzie, McLean, Mercer, Oliver, Adams, Billings, Bowman, Golden Valley, Hettinger, Slope, Stark, Emmons, Grant, Morton, Sioux, Towner, Rolette, Bottineau, and Ramsey.

4-10.1-06. Meetings - Quorum - Compensation and expenses of council. A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of three council members within seven days of receiving such a petition. The council shall determine the amount of compensation payable to each member of the council, except the chairman. The amount payable may not exceed seventy-five dollars per day plus reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the commissioner.

4-10.1-07. Expenditure of funds. Every expenditure of funds made pursuant to this chapter must be approved by the council, submitted upon itemized voucher to the office of the budget for approval, and paid by warrant-check issued by the office of management and budget.

4-10.1-08. Potato council powers and duties. In the administration of this chapter, the council has the following powers and duties:

1. To contract and cooperate with any person, firm, corporation, limited liability company, or association, or with any local, state, or federal department or agency for research, education, publicity, promotion, and transportation for the purposes of this chapter.

2. To expend the funds collected pursuant to the provisions of this chapter and appropriated for its administration.
3. To appoint, employ, bond, discharge, fix compensation for, and prescribe the duties of such administrative, clerical, technical, and other personnel as it may deem necessary.
4. To accept donations of funds, property, services, or other assistance from public or private sources for the purpose of furthering the objectives of the council.
5. To investigate and prosecute in the name of the state of North Dakota any action or suit to enforce the collection or ensure payment of the taxes authorized by the provisions of this chapter, and to sue and be sued in the name of the council.

4-10.1-09. Tax levied - Continuing appropriation. An assessment at the rate of two cents per hundredweight [45.36 kilograms] must be levied and imposed upon all potatoes grown in the state or sold to a designated handler. The council, in its discretion, may increase the assessment by not more than one-half cent per hundredweight [45.36 kilograms] per year until a maximum assessment of four cents per hundredweight [45.36 kilograms] is reached. This assessment must not be imposed upon any potatoes retained by growers to be used for seed purposes or for consumption by the grower. This assessment is due upon any identifiable lot or quantity of potatoes.

A designated handler of potatoes shall file an application with the council on forms prescribed and furnished by the council which must contain the name under which the handler is transacting business within the state, place or places of business, and location of loading and shipping places of agents of the first handler, the names and addresses of the several persons constituting the firm partnership, if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state and, if a limited liability company, the limited liability company name and the names and addresses of its principal managers and agents within the state. The council shall issue a certificate to the designated handler. A designated handler may not sell, process, or ship any potatoes until it has furnished a certificate as required by this section.

Every designated handler of potatoes shall collect the assessment imposed under this section by charging and collecting from the seller the assessment per hundredweight [45.36 kilograms] by deducting the assessment from the purchase price of all potatoes subject to the assessment and purchased by the designated handler.

Every designated handler shall keep as a part of its permanent records a record of all purchases, sales, and shipments of raw potatoes, which may be examined by the commissioner, or the commissioner's designee, at all reasonable times. Every designated handler shall report to the council stating the quantity of potatoes received, sold, or shipped by it. The report must be made at the times and in the manner prescribed by the council. The remittance of the assessment as provided in this section must accompany the report. All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of a special revolving fund designated "spud fund". All money in the spud fund is appropriated on a continuing basis to the council for carrying out the purposes of this chapter. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.

4-10.1-10. Appropriation of funds. The provisions of section

54-27-10 do not apply to appropriations from the spud fund nor may any part thereof revert at the expiration of any biennium.

4-10.1-11. Storage breakdown loss - Tax refund. Repealed by

S.L. 1975, ch. 52, § 5.

4-10.1-12. Nonparticipating growers - Refunds. Growers may become nonparticipating growers and claim exemption from the provisions of this chapter. To claim exemption, a nonparticipating grower shall notify the council, in writing, on or before July fifteenth of each year, of his intention not to participate under the program and to claim a refund of the assessment herein levied on potatoes grown by him during that current year. Such grower, if he has notified the council of his intention not to participate, as herein provided, is eligible between June first and June fifteenth of the following year, to claim a refund of the assessments paid on such crop pursuant to this chapter. The claim for refund must be made in the manner and form prescribed by the council. Upon receipt of a claim for refund from an eligible, nonparticipating grower, the council shall refund the assessments paid on the crop grown during the year of the claimed exemption.

4-10.1-13. Referendum by growers. Whenever fifteen percent of the participating growers, but not more than fifty percent of the signatory parties from any one district, as disclosed by the records of the council for the preceding year, petition the council, the council shall conduct a referendum among the participating growers of the state to determine whether they wish the legislative assembly to raise or lower the tax imposed by section 4-10.1-09. Such referendum must be conducted only among participating growers who have paid all taxes assessed pursuant to this enactment for the preceding year, and the ballots must be prepared by the council and mailed to each participating grower at least thirty days prior to the last date for filing ballots. In addition, each ballot must be accompanied by a notice to each participating grower:

1. Of the date of the filing of the petition by the growers for the referendum and the number of signatures contained thereon.
2. Of the date and place where the council will open and tabulate the ballots, which date must be not less than five days after the last date for filing the ballots.
3. Of the last date upon which ballots must be filed with the council, or postmarked if delivered to the council by mail.
4. That any participating grower may attend the meeting of the council at the time the ballots are opened and the votes tabulated.

If a majority of the participating growers voting upon the question are in favor of the proposed change, the council shall certify the result to the commissioner with the request that the department prepare a bill to submit to the legislative assembly at the next legislative session to modify this chapter in conformity therewith. The results of such referendum are advisory only and the legislative assembly is in no way obligated to adopt legislation enacting the proposals contained in any referendum.

4-10.1-14. Collection of unpaid assessment. If a designated handler fails to pay the assessment provided herein, the collection thereof may be enforced by the council in any court with competent jurisdiction within this state.

4-10.1-15. Misdemeanor to violate provisions of this chapter. Any person who willfully violates the provisions of this chapter is guilty of a class B misdemeanor.

4-10.1-16. Penalty for nonpayment of assessment. Any designated handler who fails to pay any assessment levied by this chapter on the date that the same becomes due is delinquent and the council may levy a penalty on the delinquent payments of ten percent of the assessment due, plus interest at the rate of six percent per annum from the due date, which penalty and interest must be collected in the manner as prescribed by section 4-10.1-14.

4-10.1-17. Records of council - Inspection. All of the records of the council, including acreage reports, tax returns, claims of exemption, and any other data, records, or information retained by the council are public information and must be available for the inspection of any person for any lawful purpose; provided, however, that the council is empowered to make rules

and regulations concerning the inspection of such information or data, and the time or place of such inspection or the manner in which the information shall be made available.